

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JERRY VANDIVER #141306,

Plaintiff,

vs.

Case No. 05-CV-73342

HON. GEORGE CARAM STEEH

CARYLON WILLIAMS, CHARLENE
CARBERRY, MELANIE FRANK,
and JOY ANDERSON,

Defendants.

/

ORDER ACCEPTING MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff Jerry Vandiver is an inmate in the custody of the Michigan Department of Corrections. His complaint raises claims under 42 U.S.C. § 1983 arising from his placement in administrative segregation. This matter is before the court on defendants' motion for dismissal and summary judgment. The Magistrate Judge issued a report and recommendation which recommends that this court grant defendants' motion. The court has reviewed the file, record, and magistrate judge's report and recommendation. Objections to that report have been filed by plaintiff within the established time period and have been duly considered. The court accepts the magistrate judge's report and recommendation.

Plaintiff has filed twenty-one objections to the magistrate judge's report, which essentially boil down to a disagreement with the conclusion that defendants did not retaliate against him. Plaintiff was found to have engaged in protected conduct when he filed a grievance against defendants on January 18, 2005. Seven days later defendants

placed plaintiff in segregation when Williams wrote a Notice of Intent to Classify to Administrative Segregation (NOI). Plaintiff claims this act was in retaliation for his grievance, and was based on false charges for which he was not given a hearing.

However, subsequent to the Williams NOI, plaintiff was placed in segregation pending a transfer to another facility due to concerns about the security of the prison and plaintiff's mental health. Defendant Carberry's Affidavit asserts that the NOI to Classify to Administrative Segregation was dismissed when plaintiff was placed in segregation pending a transfer. The magistrate judge correctly concluded that summary judgment is proper where defendants show that they would have taken the same action regardless of the protected activity engaged in by plaintiff. See Thaddeus-X v. Blatter, 175 F.3d 378, 399 (6th Cir. 1999). Here, plaintiff would have been placed in segregation due to the defendants' determination, which has sufficient support in the record, that he was a security threat, even if the grievance had not been filed. Finally, plaintiff was not entitled to a hearing pending a transfer to another facility, nor was there any disciplinary action taken against him for which he was entitled to a hearing.

IT IS ORDERED that the magistrate judge's report and recommendation is ACCEPTED.

IT IS FURTHER ORDERED that summary judgment is GRANTED for defendants.

SO ORDERED.

Dated: September 14, 2006

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on September 14, 2006, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk